

Lincoln Hills Nursing Home, Inc.; Leaseholding Company; and Tell City Distributors (Joint Employers) and Ralph E. Alvey and Tammie S. Anson and Marsha Lynn Anson. Cases 25-CA-11841, 25-CA-12436, and 25-CA-12578

May 10, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On June 9, 1982, Administrative Law Judge Leonard M. Wagman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions, a supporting brief, and an answering brief to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record¹ and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Lincoln Hills Nursing Home, Inc.; Leaseholding Company; and Tell City Distributors (Joint Employers), Tell City, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ On March 10, 1983, Respondent filed with the Administrative Law Judge a motion to reopen the record for admission of a tape recording and transcript of an October 14, 1981, conversation among Administrator Ambrose, Supervisor Harding, and employee Marsha Anson, and on March 14, 1983, the Administrative Law Judge transferred the said motion to the Board for consideration. We hereby deny the motion because Respondent has not shown that the said evidence is either newly discovered or previously unavailable.

² Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge: This proceeding was heard before me in Owensboro,

266 NLRB No. 140

Kentucky, on January 13, 14, and 15, 1981, and in Tell City, Indiana, on March 3, 4, and 5 and April 21, 22, and 23, 1981, pursuant to complaints which were consolidated by order of the Regional Director for Region 25. The three complaints were issued on July 10, September 4, and October 23, 1980,¹ respectively, each upon a separate charge filed by Ralph E. Alvey, Tammie S. Anson, and Marsha Lynn Anson, respectively. At the hearing before me, counsel for the General Counsel amended the complaint in Case 25-CA-12578 to allege additional violations of Section 8(a)(1) of the National Labor Relations Act (29 U.S.C. § 151, *et seq.*), herein called the Act.

The consolidated complaint, as amended, alleges that Respondent Lincoln Hills Nursing Home, Inc.; Leaseholding Company; and Tell City Distributors (Joint Employers) violated Section 8(a)(3) and (1) of the Act by failing to reinstate economic striker Ralph E. Alvey to full-time status at Respondent's nursing home and by discharging employees Tammie S. Anson and Marsha Lynn Anson because they were or were suspected of being union activists or adherents. The complaint, as amended, also alleges that Respondent violated Section 8(a)(1) of the Act by warning employees to avoid contact with the Union's supporters, maintaining surveillance of employees' union activity, prohibiting employees from making or receiving telephone calls at Respondent's facility, warning employees that their husbands were not to enter Respondent's premises, and warning employees that they were not to solicit on behalf of the Union anywhere on Respondent's premises. Respondent by its timely answers, as amended at the hearing, denied commission of the alleged unfair labor practices.

Upon careful consideration of the entire record, from my observation of the witnesses as they testified, and upon consideration of the post-trial briefs received from the General Counsel and Respondent, respectively, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

From the pleadings, I find that Respondent consists of three Indiana corporations which, as joint employers, maintain their principal office and place of business in Tell City, Indiana, where they operate a nursing home and provide health care and related services.

During the 12 months preceding issuance of each of the complaints, Respondent performed services, the gross value of which exceeded \$100,000. During the same periods, Respondent received goods at its Tell City, Indiana, facility directly from States outside the State of Indiana valued in excess of \$50,000. Respondent conceded, and I find from the foregoing facts, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

¹ Unless otherwise stated, all dates mentioned henceforth occurred in 1980.

II. THE LABOR ORGANIZATION INVOLVED

From the pleadings before me, and from the Board's decision in *Lincoln Hills Nursing Home*, 257 NLRB 1145 (1981), I find that Chauffeurs, Teamsters, and Helpers Local Union No. 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, referred to below as the Union, is, and has been at all times material to this case, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Board's decision in *Lincoln Hills Nursing Home*, supra at 1147-48, shows that the Board certified the Union as the exclusive collective-bargaining representative of Respondent's service and maintenance employees on November 21, 1976.² On January 4, 1977, Respondent and the Union began contract negotiations. On April 29, 1977, an economic strike erupted at Respondent's Tell City nursing home and continued until July 29, 1977, when the Union tendered an unconditional offer to return to work on behalf of 80 unit employees, including Ralph E. Alvey, the Charging Party in Case 25-CA-11841, one of the consolidated complaints before me. Respondent's failure to recall Alvey was one of the matters raised in the earlier *Lincoln Hills Nursing Home* case. There, the Board found, contrary to the General Counsel's contention, that Respondent had shown a substantial business reason for its failure to recall Alvey, and thus had not unlawfully discriminated against him.

Although the Board dismissed several of the General Counsel's allegations in the earlier case, the Board found that on November 29, 1977, Respondent had withdrawn recognition from the Union in violation of Section 8(a)(5) and (1) of the Act. The Board also found that Respondent discriminated against former economic strikers in violation of Section 8(a)(3) and (1) of the Act by according job preference to strike replacements, by hiring new employees rather than recalling former strikers, and by transferring a nonstriker to a former striker's position, thereby obviating the necessity for recalling the former striker. In footnote 2 of the decision, the Board declared:

We find that Respondent, by its unlawful withdrawal of recognition of the certified bargaining representative, its refusal to reinstate a substantial number of strikers, and the other violations found herein, has demonstrated a general disregard for its employees' fundamental statutory rights. We view the aforesaid conduct as sufficiently severe to warrant the imposition of the broad remedial order recommended by the Administrative Law Judge, which

² The unit is described in the Board's decision as:

All service and maintenance employees, including licensed practical nurses, nurses aides, charge aides, orderlies, physical therapy aides, kitchen employees, activities employees, social designee, housekeeping employees, and laundry employees of the Employer at its Tell City, Indiana, facility, excluding all office clerical employees, all professional employees, all registered nurses, director of nursing, assistant director of nursing, the dietary manager, all guards, and all supervisors as defined in the Act.

we shall accordingly adopt. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

The Board's findings and conclusions regarding Respondent's discriminatory treatment of the strikers following the 1977 strike provided the backdrop for the issues presented in the current proceedings. I have also noted the leading role which Roger Ambrose, Respondent's administrator, played in those earlier unfair labor practices. Having set the background, I turn to the matters raised before me.

B. The Denial of Full-Time Employment to Ralph E. Alvey

1. Facts³

Respondent hired Ralph E. Alvey on September 24, 1973, as a maintenance man at its Tell City nursing home. Alvey remained employed in that position until April 29, 1977, when he went out on strike along with other bargaining unit employees. At the strike's conclusion, on July 29, 1977, the Union made an unconditional offer to return to work on Alvey's behalf. On or about March 14, 1979, Respondent recalled Alvey to part-time employment as a maintenance man. He reported for work on March 19, 1979. Alvey remained in a part-time status until September 1980, when Respondent granted to him the full-time employment status which he enjoyed at the time of the hearing in these cases.

Following the Union's certification in 1976, Alvey served as a member of the Union's bargaining committee, participating in negotiations across the table from Administrator Roger Ambrose. When he returned to part-time employment, Alvey continued to support the Union in conversations with employees at the nursing home.

Prior to the strike, Respondent employed Alvey as one of two maintenance employees at its nursing home. After Alvey and the other maintenance employee, Norman Holpp, went out on strike, the Company hired James Tindall on May 2, 1977, and Michael Chenault on May 4, 1977, as their replacements. The Company laid off Chenault on or about March 22, 1978, but retained Tindall. In June or July 1978, when Tindall was Respondent's only maintenance employee, he began complaining to Administrator Ambrose about the increasing workload and suggested recalling Ralph E. Alvey.

Tindall testified on direct examination that, when he requested Alvey's recall, Ambrose responded in substance that he would not call Alvey back because of his involvement with the Union and that he, Ambrose, would rather contract the maintenance work out than recall Alvey. Tindall also testified about conversations he had during the strike in April or May 1977 in which Ambrose complained of his treatment by Alvey at the negotiating table. Ambrose denied these assertions.

There are circumstances which cast serious doubt upon the reliability of Tindall's testimony. In his pretrial affidavit, dated March 5, Tindall told of a conversation in which he asked Ambrose to recall Alvey. Absent from

³ Except as noted below, the facts regarding the alleged discrimination against Ralph E. Alvey were not in dispute.

this account was any reference by Ambrose to Alvey's union activity or Alvey's conduct at the bargaining table. Tindall testified in substance that, after he gave the affidavit to the Board agent, it did not occur to him to include these remarks. Indeed, in his affidavit, Tindall did not mention the word "union" once. Further, in the same affidavit, Tindall asserted that he "didn't understand why Alvey wasn't put on full time."

Substantial contradiction further impaired Tindall's testimony. First, he denied ever telling Alvey of Ambrose's incriminating remarks regarding why Alvey was not called back to work. A few questions later, Tindall testified that he had reported Ambrose's remarks to Alvey. The infirmities in Tindall's testimony and his uneasiness as he testified about Ambrose's remarks fostered the suspicion that the disputed portion of Tindall's recollection of Ambrose's remarks was of recent vintage. Thus, although Ambrose did not generally impress me as a reliable witness, in this instance I have accepted his denial.

Prior to April 29, 1977, the inception of the strike, maintenance employees Alvey and Holpp performed normal maintenance and a number of other functions.

Alvey and Holpp devoted an average of 1 to 1-1/2 days per week to painting. After the strike, Respondent assigned the painting to two housekeeping employees.

Alvey and Holpp also replaced burned-out bulbs, including 400 fluorescent bulbs, 600 regular lightbulbs, and 300 baseboard, exit, and call lights. Additional duties included waxing and buffing floors, carpet cleaning, moving supplies from the nursing home's receiving dock to interior storage areas, maintaining the lawn and shrubs, keeping walks free of snow and ice, picking up trash from Respondent's parking lot, maintaining the parking area service, and restocking vending machines.

The enumerated duties together with the normal maintenance activities which included repair and care of equipment, including laundry carts, food carts, electrical appliances, and plumbing, provided Alvey and Holpp with 45 to 50 hours per week per man. They used their overtime to clean carpets, to buff and wax floors, and to do major repairs that could not be safely accomplished during normal working hours.

I find from Tindall's testimony that during the strike he and employee Chenault performed all the tasks previously assigned to strikers Alvey and Holpp. However, Housekeeping Supervisor Carrol Harding stripped floors, either by herself or with Chenault's assistance, during the period covered by the strike.

The end of the strike saw no change in Chenault's and Tindall's duties. However, following Chenault's layoff on March 22, 1978, and until Respondent hired Wayne Carwile on November 27, 1979, Carrol Harding stripped floors and waxed floors. Housekeeping employees shared in the carpet cleaning and performed all of the painting. Housekeeping employees Kelly Alvey and Lana Cronin devoted 3 days weekly to painting. Their normal workweek consisted of 7 hours per day and a total of 35 hours per week. However, with the addition of painting to their housekeeping chores, Cronin and Kelly Alvey worked from 2 to 6 hours of overtime once or twice per week.

When Respondent hired housekeeper Kelly Alvey on August 2, 1977, the housekeeping department had five

employees. Thereafter, that number gradually increased. By November 1980, with Wayne Carwile's hire, the housekeeping department increased to 10 employees.⁴ As of April 22, 1981, the hourly rates of pay for the 10 housekeeping department employees ranged from \$3.50 to \$3.90. As of that date, Wayne Carwile's hourly rate was \$3.60. At the time of the hearing before me, Ralph Alvey's hourly rate was \$4.50 or \$4.60. These wage rates were established on January 1, 1981, when Respondent granted Alvey and the housekeeping employees a 25-cent hourly wage increase. One year earlier, Respondent had granted its maintenance and housekeeping employees a 30-cent across-the-board wage increase.

Upon receiving word of Alvey's stated intention to report to work on Monday, March 19, Ambrose warned Tindall to "be very careful" in dealing with Alvey. On Monday, March 19, Alvey came to work at the nursing home as a part-time employee. Tindall, in a discussion with Ambrose, suggested that Alvey be hired as a full-time employee. Ambrose rejected the suggestion, adding that "he did not want [Alvey] in the facility in the first place."

After Alvey became a part-time employee, Tindall continued to press Ambrose to employ Alvey on a full-time basis. These efforts were fruitless. Tindall felt pressed by an increasing backlog of maintenance work, which Alvey's part-time schedule did not relieve materially. Tindall also found that Alvey's varying workdays made scheduling work for Alvey difficult. Tindall provided the following glimpse of his situation during Alvey's part-time employment:

A lot of it was air conditioner or backup work that required a lot of maintenance work, a lot of heating elements were burned out, a lot of motor work needed to be repaired, switches were burned out, and I needed help lifting people out of the van to the dentist, doctor, or hospital, stretches, or run to the Kroger store, you know I was just swamped.⁵

In November 1979, Ambrose responded to Tindall's complaints. I find from Tindall's testimony that Ambrose announced his intention to employ Wayne Carwile "to help take the heat off [Tindall]." Ambrose explained that Carwile would move deliveries from the supply dock to designated locations in the nursing home facility, change lightbulbs, tend to the vending machines, and do "the miscellaneous jobs that [Tindall] had ordinarily done." Thereafter, on or about November 27, 1979, Respondent hired Wayne Carwile, to whom it assigned the tasks which Ambrose had enumerated and others formerly performed wholly or partly by Tindall and his predecessor maintenance employees.

After Ralph Alvey returned to work on March 19, 1979, as a part-time maintenance employee, until he as-

⁴ At the time of the hearing, the housekeeping department consisted of Supervisor Carrol Harding and employees Glenda Alvey, Kelly Alvey, Wayne Carwile, Shari Conner, Rhonda Dickman, Betty Howell, Judy James, Virginia Riley, Thelma Rothgerber, and Sarah Taylor.

⁵ One of the duties of the maintenance employees was to take nursing home residents to dentists, doctors, hospitals, or other outside health care facilities.

sumed full-time status in September 1980, he worked 2-1/2 or 3 days per week. Alvey achieved full-time status after James Tindall became incapacitated and went on leave because of a back injury. Tindall has not returned to Respondent's employment.

In mid-June 1980, Ambrose, by work and deed, evidenced hostility towards Ralph Alvey and his union activity. On the afternoon of June 13, Ambrose summoned employee Marsha Anson to his office.⁶ When Marsha Anson arrived at his office, she was met by Ambrose and Housekeeping Supervisor Harding.⁷ In the ensuing discussion, Harding characterized Marsha Anson as "an instigator and troublemaker." Ambrose turned to Marsha Anson and said: "[N]ow let me tell you something Marsha, what Jim [Tindall] and Ralph [Alvey] have will not help you and I would advise you to stay clear of them."

Shortly after leaving Ambrose's office, Marsha Anson took her 2 o'clock break in the employees' lounge, which is situated just outside Supervisor Harding's office. Marsha Anson sat down next to her sister-in-law, employee Tammie Anson, and told her of the confrontation in Ambrose's office.

When Tammie Anson left the lounge, Marsha sat with Ralph Alvey and Tindall. She began repeating Ambrose's warning that she should remain away from Ralph Alvey. As Marsha Anson spoke to Alvey and Tindall, she noticed Ambrose standing near the table at which the three employees were seated. Ambrose remained silent as he stood near the table for 3 or 4 minutes until employee Anson left.⁸

2. Analysis and conclusions

The General Counsel contends that Respondent violated Section 8(a)(3) and (1) of the Act when it refused to reinstate Ralph Alvey to full-time status because he supported the strike and the Union. However, as an alternative theory, the General Counsel argues that Alvey was entitled to reinstatement to a full-time maintenance position, and that, by hiring Wayne Carwile instead of honoring Alvey's right to full-time status, Respondent violated Section 8(a)(3) and (1) of the Act. Respondent denied that union considerations motivated its treatment of Alvey. Further, Respondent urged that business considerations persuaded it to hire Carwile rather than place Alvey on full-time status. For the reasons set forth below, I find merit in the General Counsel's contentions.

There can be little question of Respondent's hostility toward employees who supported the strike and the Union. The Board in *Lincoln Hills Nursing Home*, 257 NLRB 1145, found that soon after the strike Respondent, under the administration of Ambrose, violated Section

8(a)(3) and (1) of the Act by discriminating against former economic strikers.

Respondent repeatedly gave job preference to non-strikers over former strikers. Respondent hired new nurses aides and transferred them into nurses aides' positions instead of reinstating nurses aides who had supported the strike, hired new employees rather than recall economic strikers after the latter had tended their unconditional application for reinstatement, transferred a striker replacement to its laundry department rather than recall a former economic striker, and removed the name of an economic striker from a preferential hiring list. These acts of discrimination, in which Ambrose took a leading role, occurred in a time frame extending from the termination of the strike on July 29, 1977, until March 24, 1978.

Respondent also exhibited hostility toward its employees' union activity by refusing to bargain collectively in good faith with the Union they had selected as their exclusive bargaining representative. Specifically, the Board found that Respondent had unlawfully withdrawn recognition from the Union on November 29, 1977.

In the face of these manifestations of union animus, the Board imposed a broad remedial order against Respondent in *Lincoln Hills Nursing Home*. At footnote 2 of that decision, the Board declared that the Respondent "by its unlawful withdrawal of recognition of the certified bargaining representative, its refusal to reinstate a substantial number of strikers, and the other violations found herein, has demonstrated a general disregard for its employees, fundamental statutory rights."

Given Ambrose's manifest hostility toward the Union and its supporters, it was likely that Alvey's participation as part of the Union's bargaining committee and in the ensuing economic strike brought him into disfavor with Ambrose. Indeed, Ambrose's enmity toward Alvey in 1979 and 1980 surfaced when he cautioned both Tindall and Marsha Anson against associating with Alvey.

I also find that Ambrose showed some concern about Alvey's prouion influence upon his fellow employees. Ambrose revealed this anxiety when he stationed himself near Alvey, Tindall, and Marsha Anson as they conversed in the employees' lounge on June 13.

The warning addressed to Tindall upon Alvey's reinstatement as a part-time employee strongly suggested the motivation for Ambrose's subsequent decision to transfer a significant part of what would otherwise be Alvey's work to the housekeeping department and then hire a new full-time employee, Carwile, to do it. In light of Ambrose's willingness on prior occasions to engage in unlawful discrimination to avoid reinstating economic strikers, I find it likely that the transfer of work and Carwile's hire reflected Ambrose's design to bar Alvey from full-time status and thus limit his union activity.

However, even if such evidence of union animus were not present, Respondent would be confronted here with the teachings of *Laidlaw Corp.*, 171 NLRB 1366 (1968), enf'd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970). In that case, the Board held (171 NLRB at 1369-1370):

⁶ My findings regarding Ambrose's and Harding's remarks at this confrontation are based upon Marsha Anson's testimony. Neither Ambrose nor Harding seemed to have a firm recollection of the full content of the discussion. They also seemed reluctant to provide details. In contrast, Marsha Anson gave a full and detailed account in a straightforward manner.

⁷ Respondent admits, and the record shows, that at all times material to these cases Housekeeping Supervisor Harding was a supervisor within the meaning of Sec. 2(11) of the Act.

⁸ My findings regarding this incident are based upon the testimony of Marsha Anson, Ralph Alvey, and Tindall.

... that economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements: (1) remain employees; and (2) are entitled to full reinstatement upon the departure of replacements unless they have in the meantime acquired regular and substantially equivalent employment, or the employer can sustain his burden of proof that the failure to offer full reinstatement was for legitimate and substantial business reasons.

I find here, contrary to Respondent's position, that in November 1979 Ambrose assigned a substantial portion of the maintenance department's work to Carwile, a newly hired employee who had not participated in the strike. In remarks to Tindall, Ambrose admitted that he was hiring Carwile in response to Tindall's repeated complaints that he was unable to keep up with the maintenance work by himself. However, instead of classifying Carwile as a maintenance employee, Ambrose hired him as a housekeeping employee and transferred the maintenance work to him. From these circumstances, I find that the workload in the maintenance department in November 1979 was sufficient to provide Alvey with full-time employment.

Wholly without merit is Respondent's initial contention that Section 10(b) of the Act barred the complaint issued regarding its failure to employ Ralph Alvey on a full-time basis. Section 10(b) of the Act provides in pertinent part: "[N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." Here, the complaint alleged that, by hiring Carwile on a full-time basis on or about November 27, 1979, to perform maintenance duties instead of granting full-time status to Ralph Alvey, Respondent violated Section 8(a)(1) and (3) of the Act. As Alvey filed the underlying unfair labor practice charge on February 7, 1980, less than 6 months after Carwile's hire, I find that the 6-month limitation of Section 10(b) did not bar the complaint.

Respondent's further contention that there was no showing of union animus was fully refuted by the Board's earlier findings and the evidence recited above. Beyond question, Ambrose's hostility toward Alvey was provoked by the latter's union activism and advocacy.

Respondent's efforts to supply an economic excuse for Ambrose's treatment of Alvey is unsupported by the record. Ambrose's repeated testimony that it was less expensive for Respondent to assign former maintenance tasks to Carwile than it was to permit maintenance employees to accomplish such tasks is unsupported by any factual data. Respondent failed to show a comparison between the labor cost due to Carwile's employment and the cost which would have resulted if Alvey's workweek had expanded to 5 days. Indeed, my calculations reflect that Carwile's 40-hour week was more expensive than providing Alvey with three additional 8-hour days. In sum, I find it hard to believe that Respondent was able to save money by retaining Alvey in his 2- to 2-1/2-day schedule and expanding the housekeeping staff by adding an entirely new employee who worked a full 40-hour week at an hourly wage that was \$1 less than Alvey's.

Respondent's effort to shore up its defense with the testimony of consultant William Senteny did not assist its defense. Senteny's testimony concerned itself with the current operation of Respondent's nursing home and his experience in the management of similar institutions. Senteny did not delve into the cost-effectiveness of Carwile's employment as compared to the cost effectiveness of expanding Alvey's workweek. In short, Senteny's analysis of the nursing home as he viewed it in 1981 was irrelevant to the case at hand. Senteny's conclusions and explanation did not cross Ambrose's lips in November 1979 when he told Tindall why he was hiring Carwile.⁹

In sum, I find that Respondent has failed to rebut the General Counsel's showing that Ambrose was motivated by union animus when he hired Carwile and thus rejected Alvey as a full-time maintenance employee in November 1979. Accordingly, I find that by this discrimination Respondent violated Section 8(a)(3) and (1) of the Act.

Further, application of the Board's *Laidlaw* doctrine explained above would result in my finding that, by hiring new employee Carwile instead of extending full employment status to Alvey, Respondent violated Section 8(a)(3) and (1) of the Act.

I also find that Respondent interfered with and restrained employees in the exercise of their right to associate with one another for the purpose of encouraging one another to support the Union when Ambrose warned Tindall to stay away from Alvey, when Ambrose warned Marsha Anson to stay away from Tindall and Alvey, and when Ambrose gave the impression that he was maintaining surveillance over the association of one employee with others when he stood listening to Marsha Anson converse with fellow employees Tindall and Alvey. I find, therefore, that by the described conduct Respondent violated Section 8(a)(1) of the Act.

C. Tammie Anson's Discharge

1. Facts¹⁰

Respondent hired Tammie Anson as a nurses aide in August 1976. Respondent discharged her on February 20, 1978, for sleeping on the job, absenting herself from work on the ground that she was sick when in fact she was not, receiving too many telephone calls or visitors at work, using foul language, loafing on the job, and failing to improve in her work performance.

Respondent rehired Tammie Anson in July 1978. At that time, Tammie's supervisor, Nina LeMaire, who actually rehired Tammie Anson, warned her that "[s]he would be walking a very thin line and that if she did mess up again, that we'd have to terminate her." Supervisor LeMaire admitted that except for the incident involving nursing home resident Ed Meiring on June 21,

⁹ I noted with interest Senteny's testimony that "maintenance men usually are men" and "housekeepers are females." For this observation cast further suspicion upon Carwile's employment, raising the spectre of a deliberate effort to camouflage unlawful conduct. It fostered the suspicion that Ambrose employed a male, Carwile, as a housekeeper, and then put him to work on maintenance as a tactic in his plan to keep union advocate Alvey away from the nursing home as much as possible.

¹⁰ Except as noted below, the facts regarding the alleged discrimination against Tammie Anson were not in dispute.

1980, Tammie Anson was a good employee after her rehire, who "followed instructions" and was willing to "work extra time if she was needed sometime on double shifts."

At all times material to her second discharge, Respondent employed Tammie Anson as a qualified medication aide. This designation signified that the State of Indiana had qualified her to give prescribed medication, including topical treatments, to nursing home residents or patients.¹¹

Tammie Anson worked on the first shift from 7 a.m. to 3:30 p.m. Each day, Tammie worked at one of the four stations comprising the nursing home, each of which represents one wing of the facility. She was assisted by part-time and full-time nurses aides. She worked at station 4 with two part-time and two full-time nurses aides. Tammie Anson was "in charge" of whatever station she worked at on any given day.

At all times material to this case, she was under the supervision of Nina LeMaire, Respondent's health service supervisor, who was responsible for the hiring, disciplining, and discharge of nursing personnel and for their on-the-job performance. In LeMaire's absence, licensed nurses on duty on a particular shift were responsible for the nursing personnel's performance, including that of the so-called QMAs, such as Tammie Anson.

There is no showing that Tammie Anson was active in the Union prior to the strike. Nor did she participate in the 1977 strike.

In early June 1980, Respondent granted wage increases to all nursing employees except the QMAs. Disturbed by the apparent inequity of Respondent's decision to withhold wage increases from the QMAs, Tammie Anson raised the issue with her colleagues. She discussed her complaint with QMA Kathy Beckett and floor aide Delores Cronin. Tammie Anson also raised the topic with Administrator Ambrose. She told him of her impression that some floor aides enjoyed a wage rate equal to that of a QMA. Ambrose responded that the floor aides were not making as much as Tammie Anson was and that the reason Respondent had not granted a wage increase to QMAs was that they had recently received one.

On the day after Tammie Anson's discussion with Ambrose, Supervisor LeMaire visited Tammie Anson's work station and raised the topic of wages. She assured Anson that no floor aides receive as high a wage rate as Tammie Anson enjoyed, that only one QMA was making a higher wage rate, and that only one other QMA received the same wage rate.

Tammie Anson remained disquieted about the wage situation. She expressed her opinion in separate discussions at the nursing home with employees Tindall and Beckett.

From June 13 until June 20, 1980, Tammie Anson engaged in discussions about the Union with fellow employees. One such conversation occurred at the house trailer of her sister-in-law, Marsha Anson, in the presence of Tammie's brother, Paul, and Tindall. In the

course of the discussion, Tindall issued six union authorization cards each to Marsha and Tammie Anson. Tammie signed one of the cards and mailed it to the Union. During the same period, Tammie Anson discussed the Union with fellow employee Barbara Shaw while working at the nursing home.

On June 20, in Administrator Ambrose's office, Tammie Anson, Nina LeMaire, and Ambrose had just finished discussing Tammie Anson's request for a day off when Ambrose counseled Tammie Anson to read rule 21 of Respondent's "Employee's Manual." That rule provided:

Solicitation and/or the distribution of literature for any purpose by employees during working time in any area of Lincoln Hills Nursing Home is strictly prohibited, except during non-working time in areas where such activity will not interfere with delivery of direct patient care.

Solicitation and/or the distribution of literature for any purpose by non-employees in any area of Lincoln Hills Nursing Home is strictly prohibited.

Loitering in or about the premises after working hours is not permitted. Those providing transportation to employees should remain in their cars while waiting.

Ambrose and Tammie Anson discussed the rule. Anson pressed Ambrose for an explanation of the rule and of why he required her to read it. Ambrose spoke of hearing rumors and then rose from his desk, left his office, and returned with a copy of the Employee's manual.

In Ambrose's absence, Tammie Anson asked Nina LeMaire for an explanation of Ambrose's remarks about rumors. LeMaire explained that, while she did not know what Ambrose was referring to, she, LeMaire, had heard the same rumors.

Upon his return to his office, Ambrose handed Tammie Anson the Employee's manual. Anson glanced at page 10 and read it. When she asked Ambrose to designate the portion she had violated, Ambrose said "the first part." Tammie Anson looked at him. At this point, he warned: "[Y]ou better not be." Anson asked Ambrose for elaboration on his remarks. He responded: "[I]f the shoe fits, wear it." When she denied guilt, Ambrose responded with: "[Y]ou better not be."

Notwithstanding the no-solicitation/no-distribution rule set out in the Employee's manual, Respondent's policy has been to permit solicitation in working areas during working time. Employees freely solicit on behalf of Avon products in working areas during working time. This solicitation was in the form of Avon product catalogues available at the work stations of employees who were Avon salespersons. Such solicitation has freely occurred under Supervisor LeMaire's observation, and without imposition of disciplinary action on the soliciting employee. One employee has freely solicited sales of home decorations at the nursing home, free of management's interference and without suffering disciplinary action.

¹¹ In contrast to the QMA, a nurses aide is responsible for basic health care of nursing home residents or patients, which includes giving them baths and seeing that they are dressed properly.

During the 1980 Girl Scout cookie campaign, employee Doris Klemen solicited cookie orders from her fellow employees during working hours at Respondent's nursing home. In addition, after the cookies had been delivered to her by the Girl Scouts, Klemen distributed them to the purchasers at the nursing home during working hours.

The incident which precipitated Tammie Anson's discharge occurred on the afternoon of June 21 when she was the QMA at station 3 on the ground floor of Respondent's nursing home.¹² About 2:50 p.m. on that day, Ed Meiring, a resident of the nursing home, was returning from a visit to the community. He was apparently intoxicated. However, he handed in his cigarettes as required by Respondent's rules and went to his room.

Meiring quickly returned to station 3 where he complained to Tammie Anson that nursing home resident Eddie Sutton had been throwing Meiring's personal effects away. Sutton, who was slightly built,¹³ and whose chronological age was 28 or 29, was mentally retarded and had, on occasion, thrown some of Meiring's personal effects down a toilet bowl.

Tammie Anson left station 3 and went to Meiring's room. She saw nothing out of place, returned to Meiring, and told him of her findings. Meiring rejected Anson's report and renewed his complaint that Sutton, who was present, had been throwing his personal effects away. Meiring warned: "I'm going to knock his head off."

Despite Anson's efforts to calm him, Meiring continued his attack. He came toward Tammie Anson and demanded the return of his cigarettes. Meiring complained again about Sutton throwing his personal effects away and about being deprived of his cigarettes.

Meiring again threatened to punish Sutton and moved toward him with his fists ready. Anson cautioned Meiring warning that he would be restrained if he persisted in his action. Meiring repeated his threat.

When Meiring again threatened Sutton, Tammie Anson attempted to restrain Meiring by the arm and called out for assistance from a day-shift aide, Beth Foutz. Foutz arrived and began helping Tammie Anson to restrain the struggling Ed Meiring in a wheelchair referred to as a geriatric chair. About 3 p.m., members of the evening shift on station 3 began arriving including charge aide Polly Bolin and nurses aide Evelyn Faulkenburg. Despite Meiring's struggles, Tammie Anson and

her associates succeeded in restraining him in the geriatric chair by putting a waist restraint on him and fitting a food tray into place on the chair. Faulkenburg moved Meiring and the chair into the nearby dining room.

Tammie Anson returned to her desk at station 3 and began giving Bolin the usual reports on patients' conditions, unusual incidents, and other information pertinent to the continuing care of the patients for whom station 3 was responsible. While Anson was reporting to Bolin, Faulkenburg returned with word that Meiring was freeing himself from his waist restraint.

Anson, Bolin, Faulkenburg, and Foutz went to Meiring and attempted to return him to the chair. In the course of his kicking and punching, Meiring inflicted a bruise on Faulkenburg. Tammie Anson, assisted by Bolin, Foutz, and Faulkenburg, secured the waist restraint on Meiring and added a chest restraint. Anson checked the restraint for tightness by inserting her fingers between the patient's body and the restraint. Ed Meiring continued struggling. He directed epithets and obscenities at the four women and threatened violence.

Tammie Anson returned to the station 3 desk, resumed her report to Bolin and charted the restraints.

About 3:20 p.m., Faulkenburg asked Anson if wrist restraints should be put on Meiring. Anson, whose shift had expired, put the same question to Bolin. Bolin turned to Anson for advice. Anson said it was Bolin's decision.

The wrist restraint discussion ended when Bolin said they should be put on. Foutz tied one wrist restraint to Meiring. Tammie Anson attached the other. Tammie Anson left the nursing home at approximately 3:25 p.m. At that time, Meiring was red in the face and was perspiring. He was also strenuously attempting to free himself.

Moments after Tammie Anson's departure, registered nurse Mary Jo Schaefer, the supervisor of the day shift, descended from her work station on the third floor and was exiting when her attention was drawn to Meiring. She observed Meiring restrained tightly in a geriatric chair, that he was struggling to get out, that his face was red, and that he was boisterous. She also observed that "he looked completely exhausted."

Schaefer did nothing to release Meiring. Instead, she asked why he was thus restrained. Employees who were in the neighborhood explained that "he was drunk." She questioned the need for the restraints, and went to the intercom to call Donna Wooly, a licensed practical nurse, who was the supervisor on the evening shift. Wooly had already been summoned to the scene of Meiring's restraint by a night-shift aide from station 3. When Wooly arrived on the scene, she conferred with Schaefer, observed Meiring in the geriatric chair, and asked Bolin for an explanation. Wooly turned to Schaefer, who refused to take further responsibility or do anything more about Meiring's situation. Wooly decided to release Meiring after she removed one of the wrist restraints. Marsha Anson, Bolin, and Faulkenburg completed the release.

Following the removal of the restraints, Meiring went to his chair in the dining room, sat down, smoked a cigarette, and calmed down, while talking to housekeeping

¹² My findings regarding this incident are based for the most part upon a compendium of the testimony of Tammie Anson and the other participants in the incident. However, as Anson seemed candid and appeared to be conscientiously tapping her memory for a full account, I have credited her wherever an issue of credibility was raised. Housekeeper Betty Howell admittedly could not remember who put wrist restraints on Meiring and some other details of the incident. Nurses aide Evelyn Faulkenburg, who testified for Respondent, also had some difficulty remembering details of the incident. I also noted that Faulkenburg was less than candid when cross-examined about Meiring's attitude toward her and seemed reluctant to provide an account of an exchange between Nina LeMaire and Faulkenburg and other participants after the Meiring affair. Polly Bolin Story (referred to below as Polly Bolin), who also testified for Respondent about the Meiring incident, had some memory problems when questioned about Meiring's threat to Sutton and other portions of Meiring's encounter with Tammie Anson.

¹³ Sutton was approximately 4 feet 11 inches tall and weighed about 100 pounds. Meiring was 75 years old, 5 feet 6 inches in height, and weighed 145 pounds.

employee Marsha Anson. In a short while, he returned to his room.

Later that evening, Schaefer telephoned the nursing home and asked Wooly what had happened to Meiring and what his condition was. That same evening, Wooly gave an account of the Meiring incident to LeMaire. Wooly described Meiring as being "very upset."

At the time of the Meiring incident, Respondent's patient care policy book contained the following instructions regarding the use of patient restraints:

TITLE:	PATIENT RESTRAINTS
PURPOSE:	1. To limit movement of body to protect the patient from injury. 2. To protect patient from causing harm to himself and others.
EQUIPMENT:	Safety belt Vest Restraint Bed Restraint Wrist and ankle restraint Mitt restraints

PROCEDURE FOR ALL TYPES	POINTS OF EMPHASIS
1. Doctors order for restraining patients.	Restraint should be used after all other measures have failed.
2. Explain to patient reason for restraint.	Frequent visits to patient to determine mental status, to allay anxiety and fear.
3. When possible, get another [sic] person to assist in applying restraints.	Lengthen signal cord and place it within reach of patient.
4. All restraint [sic] are to be checked every hour and charted.	Selection of appropriate type of restraints.

Respondent's patient care policy book also contained specific instructions regarding wrist and ankle restraints. One of the listed reasons for using a wrist or ankle restraint was: "When patient is combative." The same instruction sheet also states: "A physician's written order is required for application of wrist and ankle restraints."

The record suggested that a doctor's order was not always sought before putting restraints on Respondent's patients. One such instance occurred while Tammie Anson was on duty as a QMA in February or March 1980. On that occasion, Tammie Anson put a diaper restraint on patient Anna Freuwald, on a licensed practical nurse's instructions, without charting it. At a later time, on her own initiative, Tammie Anson put a diaper restraint on Freuwald. LeMaire saw the restraint on the patient without commenting. Respondent took no disciplinary action on that occasion.

In the autumn of 1979, Tammie Anson, on her own initiative, applied a diaper restraint to patient Lawrence Nugent. Although LeMaire saw the restraint as she walked past the patient, she said nothing to Tammie Anson, and no disciplinary action or warning resulted.¹⁴

¹⁴ I did not credit LeMaire's testimony that she did not know of any instance, aside from the Meiring incident, when restraints were placed on

I find from LeMaire's testimony that Respondent's normal procedure is to put restraints on patients when prescribed by a physician or for the safety of other patients. She also conceded that where the patient's safety or that of other patients is immediately threatened and restraints are necessary to avoid harm, they may be applied prior to obtaining a physician's order.

On Sunday, June 22, nurse Schaefer telephoned Supervisor LeMaire at home and reported that Meiring "was sick and he was in bed and had refused his breakfast and his dinner and that he was running a fever and . . . that there had been problems out there the day before." When LeMaire asked about the "problems," Schaefer declined to talk about them on the telephone.

About noon on June 22, Schaefer and LeMaire met in the latter's office regarding the use of restraints on Meiring on June 21. Schaefer described in detail what she knew of the incident.

Schaefer reported that she had heard that Meiring had returned to the nursing home about 3 p.m., and "became upset because another patient, Eddie Sutton, had been into his room." Schaefer described Meiring's loudness and conduct. According to Schaefer, at this point "it was decided to restrain him because he was drunk." Schaefer told LeMaire "about his wrists being restrained tight; flushed to the chair . . . and how red his face was, and the language that had been used." Schaefer disclosed that she had seen the restraints, clocked out, and left the premises after advising Donna Wooly. Schaefer also reported that on the following morning Meiring had refused to eat and had suffered a headache.

LeMaire also discussed the Meiring incident with Wooly. Wooly confirmed Schaefer's report.

On Monday morning, LeMaire spoke to Helen Jones and nurses aide Beth Foutz. The record does not disclose what Jones contributed to LeMaire's information regarding the Meiring incident. However, Foutz reported that she had helped Tammie Anson put restraints on Meiring and that he "had been drinking and he was arguing when she started to put the restraints on him."

On Tuesday, June 24, LeMaire discussed the Meiring affair with charge aide Polly Bolin. Bolin told of Tammie Anson's encounter with Meiring and of Anson's request that she, Bolin, help put restraints on him. Bolin admitted that she had complied with Anson's request. Bolin also reported that, as she and Anson were putting restraints on Meiring, he was struggling and kicking with them.

On the same day, nurses aide Evelyn Faulkenburg voluntarily came to LeMaire's office after hearing of her investigation of the Meiring incident. Faulkenburg told LeMaire that, as she came on duty for the second shift on June 21, she observed efforts underway to secure Meiring in a geriatric chair. Faulkenburg admitted that, upon request, she assisted in the process and reported that

a patient before calling a charge nurse. Tammie Anson was a more candid witness than was LeMaire. Further, neither Schaefer's nor Wooly's reaction to Meiring's plight supported LeMaire's assertion. Neither of them protested that restraints had been used on him before consulting one of them. Schaefer's testimony that "I should have been called" was an afterthought.

Meiring was "upset and he appeared to be distressed." Faulkenburg said that she was distressed by what had happened, and believed that the treatment accorded Meiring "was very wrong."

LeMaire did not extend her inquiry to other employees who had witnessed the Meiring incident. She did not afford Tammie Anson any opportunity to provide her version of the Meiring incident.

On Monday, June 23, Administrator Ambrose first learned of the Meiring incident. In the morning, LeMaire came to him and reported "a problem" with Meiring had arisen over the weekend and that she was "very concerned about the way Ed was tied to a chair." She reported that she had received telephone calls from unidentified "concerned aides." She also reported that Meiring "was still really upset about it," and did not feel well. However, "she was checking into it further to find out exactly what happened on that Saturday."

At 7 a.m. on June 24, Tammie Anson reported to the nursing home for work as usual.¹⁵ She completed her shift and at 3:15 p.m. was in LeMaire's office seeking some doctor's orders. LeMaire told her to finish her work and return to meet with Administrator Ambrose.

When she returned to LeMaire's office, Tammie Anson received a reprimand from LeMaire. Ambrose was not present. The reprimand recited that she had applied restraints to Meiring which were too tight without orders, that she was responsible for foul language which was addressed to Meiring, and that because of this treatment Meiring became sick and was confined to his bed on June 22.

In a discussion which accompanied the reprimand, LeMaire criticized Tammie Anson for allowing Sutton to remain in Ed Meiring's view on June 21. LeMaire also said that Tammie Anson should have punished Sutton. LeMaire discharged Tammie Anson without seeking her explanation of her role in the Meiring incident.

While the exchange between LeMaire and Tammie Anson was proceeding, Ambrose appeared. Addressing himself to the matter at hand, he gave his view that "the restraints were too tight." Tammie Anson refused to sign the reprimand, lost her composure, and left.

Six days after her discharge, Tammie Anson conversed with Ambrose. In passing, Anson mentioned the word "union." Ambrose, apparently believing she was referring to their conversation of June 21 regarding solicitation, assured Tammie that on that occasion he had not been questioning her about the Union. He insisted that he had only been referring to Respondent's solicitation and distribution rule.

Of the four employees involved in the Meiring incident, only Tammie Anson suffered discharge. The other three, Bolin, Foutz, and Faulkenburg received written reprimands.

2. Analysis and conclusions

Most of Tammie Anson's brief flurry of union activity occurred between June 13 and June 20 away from the

¹⁵ LeMaire appeared to have only a sketchy recollection of her dealings with Tammie Anson on June 24. As Anson gave a more detailed account in a logical sequence, I have credited Tammie Anson's testimony regarding her contacts with LeMaire on June 24.

nursing home. However, during that period, she approached fellow employee Barbara Shaw at Respondent's nursing home, talked about signing a union card, and asked Shaw if she had done so. The confrontation between Tammie Anson, Ambrose, and LeMaire on June 20 assumed significance in regard to Anson's subsequent discharge. I find that this confrontation revealed that somehow word of Anson's union activity had reached Ambrose and LeMaire. The timing of this unusual confrontation, but a few days after Anson's one and only discussion about union cards with a fellow employee at the nursing home, strongly suggested a connection between the two events. There was no evidence that Tammie Anson had engaged in any other discussion with fellow employees at the nursing home after June 13 which might have been viewed as solicitation by Ambrose and LeMaire.

Ambrose's and LeMaire's avoidance of "union" or any other term pertaining to union activity did not persuade me that their purpose was motivated by concern for plant discipline. For this confrontation came in the wake of Administrative Law Judge Norman Zankel's decision in the earlier case. Presumably, Ambrose saw virtue in the careful wording of remarks to employees regarding union activity, and tailored his remarks to Tammie Anson accordingly.

I also find Ambrose's remarks constituted a threat of punishment if Tammie Anson ran afoul of Respondent's usually unenforced rule regarding solicitation and distribution. This threat revealed that Respondent at least suspected Tammie Anson of being an active union supporter and that it was hostile to union activists. Indeed, by this implied threat, Respondent violated Section 8(a)(1) of the Act.

Ambrose's spontaneous denial that he was referring to union activity, coming 6 days after Anson's discharge, did not help Respondent's defense. Instead, it shows Ambrose's preoccupation with "covering his tracks."

The General Counsel completed his *prima facie* case by showing that, just 4 days after Ambrose singled her out in a confrontation about "rumors" of her union activity, LeMaire discharged Tammie Anson assertedly because of her part in the Meiring incident. By discharging Tammie Anson, Respondent again selected her for special treatment. For, of the four aides who participated in the Meiring incident, only one, Tammie Anson, who was suspected of union activism, suffered discharge. In light of Respondent's previous discrimination against economic strikers and union activist Ralph Alvey, the circumstances leading up to Tammie Anson's discharge support the allegation that she was a victim of Respondent's union animus.

In support of its defense that Tammie Anson was discharged because of her role in the Meiring incident, Respondent produced the testimony of LeMaire and Ambrose. However, review of the record shows that, far from assisting Respondent's cause, their testimony provided further support for the General Counsel's contention.

Ambrose's testimony regarding who made the decision to discharge Tammie Anson was shifting and inconsistent.

ent. At first, he testified in terms which indicated that it was his decision to discharge Tammie Anson because of the Meiring incident. The General Counsel repeatedly asked him why he, Ambrose, decided to terminate Anson. Ambrose did not dispute the General Counsel's assumption in the question that it was Ambrose's decision. At one point in his testimony, Ambrose asserted that the decision was his. However, at another point in his testimony, Ambrose asserted that, by the time LeMaire came to talk to him on June 23 about terminating Tammie Anson, she had pretty well made up her mind. Ambrose testified that he then told her it was her decision to make and she made it.

LeMaire's testimony was consistent with the last of Ambrose's assertions regarding who made the decision to discharge Tammie Anson. However, I do not credit her testimony in this regard. First, I noted that counsel for Respondent and not LeMaire first made that assertion before me as he examined her on direct examination. LeMaire's acceptance of this suggestion coupled with her evasiveness regarding QMA training seriously impaired her reliability. Further, the facts in the preceding *Lincoln Hills* case, and in my findings of fact regarding Ralph Alvey, showed that it was more likely that Ambrose decided to get rid of Anson.

Ambrose's testimony regarding the reason for his decision to discharge Tammie Anson was a study in inconsistency and contradiction. Thus, Ambrose first testified, "Abuse was all I needed." When asked to explain "patient abuse," Ambrose answered: "Tieing him to the chair too tight." Asked to state other reasons, Ambrose testified: "I could say abusive language too, but that's not, all that coupled together." When questioned further on the topic, Ambrose responded, "The tieing him in the chair and the way he was tied, the way he was tied in the chair, was the main reason."

Asked about other reasons, Ambrose responded: "Abusive language." However, under further examination Ambrose denied that Tammie Anson had been guilty of using abusive language. He answered: "I didn't say that. I heard that there had been some abusive language to Ed." He went on to admit that he did not know who was guilty of using "abusive language" in the incident.

Again he responded under pressure from the General Counsel that "[T]he main reason Tammie Anson was discharged was because of the way Ed was tied to the chair." Reminded that he had said that there was another reason, abusive language, Ambrose suffered a loss of memory, answering: "I don't remember if that was the reason, the way he was tied in the chair stood out." When asked whether the tying in the chair was the only reason, he evaded the question, answering: "Nina had all the reasons."

The General Counsel again attempted to establish Ambrose's motive. Ambrose returned to abuse as the sole reason for his decision to discharge Tammie Anson. He defined abuse as being tied in the chair "[t]oo tight." Upon further questioning, however, Ambrose added that "there was some question as to whether we had doctors' orders for the wrist restraints or not." When the General Counsel offered him the opportunity to use the absence

of doctors' orders as another reason for discharge, Ambrose quickly answered: "You're right." He then added "plus the fact that she didn't notify the nurse upstairs that she was going to restrain Ed Meiring to the chair."¹⁶

Approximately 3 months after first testifying on the topic, Ambrose provided the following explanation of why he terminated Tammie Anson:

I don't think Edd [sic] was drunk enough to have the guy tied down in a chair like he was on display there by the elevator. Eddie Sutton was allowed to prance around in front of him and that is why like putting a piece of meat before a hungrey [sic] dog. Edd [sic] would get upset, but I had talked to Edd [sic] before when from all indications, he was a lot drunker than when he was the day he got strapped down in the chair, and you don't fight with them, you know. You talk to him and try to get him back to his room away from everybody. The fact that he was tied down to the chair, the way he was tied, just the way that she handled the whole situation. Bad judgment, I thought.

Respondent's proffered defense lacks probative support. Ambrose's failure to settle upon a consistent statement of why he decided to discharge Tammie Anson and his attempt to shift the burden of explanation persuaded me to reject his testimony regarding Tammie Anson's discharge. I have also rejected LeMaire's testimony that she made the decision to discharge Tammie Anson. Instead, I have found that Ambrose made the decision himself. I find, in sum, that Ambrose discharged Tammie Anson on June 24 because he suspected that she was a union activist, and thereby violated Section 8(a)(3) and (1) of the Act.

D. Marsha Anson's Discharge

1. Facts¹⁷

Marsha Anson, Tammie Anson's sister-in-law, had been employed in Respondent's housekeeping department under the supervision of Carrol Harding for about 1 year at the time of her discharge on June 24. The events leading up to Marsha Anson's discharge began on June 13. Late in the morning, she went to Roger Ambrose to inquire about the qualifications he required for a social service job opening at the nursing home. Ambrose rebuffed Marsha Anson in an irate tone. He told Anson that it was none of her "God damn business what the qualifications were," and scolded her for wasting time in

¹⁶ Ambrose testified in substance that RN Schaefer, the charge nurse on Tammie Anson's shift, was concerned that Meiring would suffer a heart attack because of the restraints. However, neither Schaefer nor Wooly nor LeMaire corroborated Ambrose's testimony in this regard. Nor did Schaefer's or Wooly's reaction to Meiring's restraints reflect such concern. As I considered Ambrose's testimony regarding Tammie Anson's discharge as generally unreliable, the lack of corroboration on this point persuaded me to reject Ambrose's testimony regarding Schaefer's fear that Meiring would suffer a heart attack.

¹⁷ Except as stated below, my findings of fact regarding Marsha Anson are based upon testimony and relevant exhibits.

his office. Marsha excused herself and left Ambrose's office.

At lunch the same day, Marsha Anson told fellow employee Rhonda Dickman about the incident in Ambrose's office that morning and about discussions with Ralph Alvey earlier regarding her complaint that she was not chosen for the social service job. Dickman advised her to return to Ambrose and to apologize to him.

Later that afternoon, as Marsha Anson was changing water in the janitor's closet at station 4, Supervisor Carrol Harding entered the closet and closed the door. Harding scolded Anson vigorously for asking Ambrose about the social service job opening, and ordered her "never to repeat anything that went on in his office to anybody." Harding also warned Anson not to repeat such matters to her husband.

That same afternoon Marsha Anson returned to Ambrose's office. Anson apologized for her earlier visit, and played down her interest in the social service job. She also complained about her transfer from station 3 which had 12 rooms to station 4 which had 24 rooms. Marsha Anson reported that she and her partner, Dickman, had unsuccessfully raised the same issue with Harding earlier in the month. Ambrose immediately summoned Harding to his office for discussion of Marsha Anson's complaint.

As the two waited, Marsha Anson asked Ambrose if he had heard about her earlier encounter with Harding that same day. Ambrose said he had, and then changed the subject.

Ambrose instructed Anson that henceforth her husband would not be permitted to wait for her in the nursing home when he came to pick her up. He warned:

I don't ever want him in the building again, and if I catch him, I will personally remove him from the premises.

Ambrose's prohibition and warning was a departure from Respondent's practice regarding treatment of employees' friends and relatives who came to Respondent's facility to provide transportation for employees.

When Harding appeared in Ambrose's office, Marsha Anson complained about the decision to move Dickman and her to station 4. Marsha Anson also sought an explanation for Harding's refusal to permit Dickman and Anson to work on weekends together.

Marsha Anson turned to her perception that Harding was hostile toward her. Anson recounted that on two occasions Harding rubbed dirt in her nose. At first, Harding did not respond to this allegation. When Marsha Anson said, "Don't just sit there like I'm crazy because I'm not," Harding responded, "Oh but I think you are." Marsha Anson insisted that she was telling the truth and had witnesses to prove her claim.

Ambrose asked Marsha Anson if she was trying to start trouble. Harding joined in and, in an obvious reference to Marsha Anson, complained, "[A]ll she is is an instigator and troublemaker." At this point, Ambrose warned Marsha Anson "What Jim [Tindall] and Ralph [Alvey] have will not help you and I would advise you to stay clear of them."

At approximately 2 p.m. the same day, Marsha Anson took her usual break in the lounge. When she arrived,

she saw her sister-in-law, Tammie Anson, seated by herself and joined her. Marsha noticed Ambrose sitting in Carrol Harding's office adjacent to the lounge. Marsha Anson began telling her sister-in-law of the conversation which had recently occurred between herself, Ambrose, and Harding.

When Tammie Anson got up and left the lounge at the end of her break, Ralph Alvey invited Marsha Anson to sit with him and James Tindall. Marsha Anson accepted the invitation and began telling Alvey about her problems. As she was talking, Marsha Anson noticed that Ambrose had moved from Harding's office and had taken up a station behind her.¹⁸ Ambrose said nothing and the employees said nothing to him as he stood there for 3 to 4 minutes. The break ended, and Marsha Anson, James Tindall, and Ralph Alvey returned to work.

That night Marsha Anson asked Alvey for a union authorization card. On Alvey's advice, she called Tindall.

During the beginning of June, Anson, Alvey, and Tindall had on occasion discussed the need for a union at Respondent's nursing home. These discussions occurred during their break time. There was no showing that any supervisor witnessed any of these discussions. Also on occasion Rhonda Dickman and Marsha Anson discussed the same topic.

On June 16 Ambrose invited Marsha Anson to his office. In the conversation following her arrival, Ambrose acknowledged the enmity which flowed between Marsha Anson and Carrol Harding. Ambrose requested that Anson write a confidential letter to him setting out her complaints and recommendations for change. Ambrose said he would respond to such a letter within 1 week. Marsha Anson agreed to Ambrose's request and returned to work.

Two days later Marsha Anson delivered a letter to Ambrose. Anson's letter contained complaints about her relationship with Carrol Harding, Anson's perception that job assignments were made on the basis of favoritism, a proposal that Respondent permit employees to take their 30-minute breaks at home rather than at the nursing home, and a complaint that Respondent was not contributing anything to employees' insurance benefits. Toward the end of her letter, Marsha Anson devoted a paragraph to assuring Ambrose that she had not "told Jim & Ralph *anything* since our last talk Monday morning, they have asked but I give you my word I told them nothing."

Earlier on June 18 Respondent's loudspeaker system announced a telephone call for Marsha Anson. Ambrose took the call and told Marsha Anson that he had told the caller that she would return the call at 11:30 a.m.

Marsha Anson believed that the caller was responding to her request for a loan on a trailer. This same caller had told her that he would leave town no later than 11 a.m. that day. Anson, fearing that her loan was in danger, went to a pay telephone and returned his call.

After she had completed her call and was returning to her work station, Marsha Anson encountered Ambrose.

¹⁸ I find from James Tindall's testimony that Ambrose's hands rested on the back of Marsha Anson's chair.

He scolded her saying: "[S]ee you don't listen. I specifically told you not to make that call."

The usual practice at Respondent's nursing home was to announce employees' incoming telephone calls over its loudspeaker system. Such calls were announced throughout the workday without regard to whether the call concerned the employee personally or Respondent's business. Further, employees received and made telephone calls during their working hours free from management's interference.

On June 19 at an inservice meeting for the housekeeping employees, Ambrose announced changes in procedures regarding work station assignments. These changes were in response to Marsha Anson's letter. After the announcement Ambrose perceived that most housekeeping employees were opposed to the announced changes.¹⁹ However, implementation did not follow. On June 20 Ambrose changed his mind and directed that existing procedures would continue.

On Tuesday, June 24, the day on which Respondent discharged Tammie Anson, Marsha Anson returned to work after a day off. That same day, Ambrose discharged Marsha Anson in his office in the presence of Housekeeping Supervisor Carrol Harding. Prior to her discharge, Marsha Anson had received no reprimands from Respondent's management. Approximately 6 months earlier, in January, Ambrose and Harding had praised her work.

The notification of Marsha Anson regarding her discharge was written and oral. The written notification appeared on a form entitled "Notice of Violation of Facility Rules or Regulations." The form announced: "On Different occasions you were observed or found in violation of Plant Rule or Regulation No. Group III 3, 6, 8, 17, Group I-10." Attached to the form was a letter dated June 20 addressed to Marsha Anson. The closing paragraph of the letter read as follows:

I have investigated your complaints and allegations and have found them to be totally unwarranted. I have found you in violation of several of the facility rules and regulations, as defined in your Personnel Policy Manual.

Group I

- (10) Unsatisfactory work and/or attitude.

Group III

- (3) Insubordination.
- (6) Delaying other employees [sic] work.
- (8) Improperly discussing or disclosing confidential [sic] information.
- (11) Abusive or inconsiderate treatment of patients, visitors or *staff*.
- (13) Refusal to accept any reasonable work assignment.
- (17) Negligence of duty.

¹⁹ I base my findings regarding the housekeeping employees' sentiment toward the announced changes upon Ambrose's testimony which employee Kelly Alvey corroborated.

The penalty for any Group III violation is termination. Therefore, you are terminated as of today, June 24, 1980.

Both Roger Ambrose's and Carrol Harding's signatures appeared at the bottom of the letter.

In addition to the letter, Ambrose told Marsha Anson that he had inspected station 4 on June 20 and found some rings in the toilets and dust on a bathroom light. He also asserted, in substance, that she had not moved beds in her assigned area from their normal positions and removed the dust and dirt which had accumulated behind and under them.

2. Analysis and conclusions

Ambrose was unhappy with Marsha Anson when she challenged his selection of Lana Cronin for the social service job. When Marsha Anson asked about the job, he reacted with rage.

Carrol Harding was also irate because of Marsha Anson's disclosure of Ambrose's harsh response. Harding made her sentiment known when she scolded Anson in the janitor's closet and warned against further disclosures.

It was in the context of a further confrontation growing out of Ambrose's reaction to her inquiry about the social service job, and Harding's reaction to Anson's disclosure of Ambrose's reaction, that the latter prohibited Marsha Anson's husband from entering the nursing home while waiting for her. Harding's accusations that Anson was "an instigator and troublemaker" appeared to refer to Marsha Anson's remark that Harding had rubbed dirt in her nose twice and Anson's offer to present two witnesses to the deeds. In any event, there was no showing that Harding was referring to union activity or other protected activity. The record shows that such suspicion arose after this confrontation when Ambrose saw Marsha Anson talking to Ralph Alvey and James Tindall. Thus, I find that Marsha Anson's union activity or other concerted activity, protected by Section 7 of the Act,²⁰ was not a factor in Ambrose's decision to issue this prohibition. The General Counsel has failed to sustain his allegation that Ambrose's prohibition against Marsha Anson's husband's presence in the nursing home ran afoul of Section 8(a)(1) of the Act. I shall recommend its dismissal.

I also agree with Respondent's contention that there was no evidence to support the allegation that Ambrose told employees "that they were not to make or receive phone calls at the facility in violation of previous company practice." I find that the record shows only that on June 16 Ambrose told Marsha Anson not to return a personal telephone call contrary to his instruction. He did not prohibit her or any other employee from making or receiving telephone calls at the nursing home. I shall recommend dismissal of this allegation.

²⁰ Sec. 7 of the Act provides in pertinent part:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection

However, Ambrose's admonition on June 13 that Marsha Anson "stay clear" of Ralph Alvey and James Tindall represented an invasion of her right to talk to and fraternize with fellow employees who favored the Union. It carried the message that Ambrose would be displeased if he perceived that she was seeking the assistance of known union supporters in the resolution of her problems. In my earlier analysis of Respondent's unlawful treatment of Ralph Alvey, I found that this warning to Marsha Anson unlawfully interfered with her Section 7 rights. I also find that this warning evidenced Ambrose's concern that Marsha Anson was likely to become a union supporter if she came under Alvey's and Tindall's influence.

There can be little doubt that Ambrose was displeased when he later observed Marsha Anson conversing with union activists Alvey and Tindall. For when he caught sight of Marsha Anson in their company on the afternoon of June 13 he showed great interest. He stood right behind Marsha Anson for a few minutes.

Ambrose's conversation with Marsha Anson on June 16 in which he suggested that she provide him a written statement of her complaints, and his efforts 3 days later to alleviate some of them, manifested an attempt to placate her and thus remove any need for her to align herself with Tindall and Alvey. However, Ambrose's proposals ran into strong opposition from other housekeeping employees.

On Friday, June 20, Ambrose abandoned his conciliatory approach and assumed an openly hostile attitude as he constructed his case against her in his memorandum. Ambrose was confronted with a disgruntled employee whom he suspected of prounion tendencies. He had previously demonstrated his willingness to resort to unlawful conduct to deal with employees who supported the Union. These factors, together with the timing of Marsha Anson's discharge less than 2 weeks after she had defied Ambrose's warning against fraternizing with Alvey and Tindall, provide convincing support for the General Counsel's contention that Ambrose unlawfully discharged her because he suspected her of prounion sentiments.

Respondent urged that it had no inkling of Anson's union sentiment and that misconduct and poor work performance caused it to discharge her. Respondent offered the testimony of Administrator Ambrose and Housekeeping Supervisor Harding to support the defense. However, the infirmities in Ambrose's testimony caused me to have serious doubt as to Respondent's motive for terminating Marsha Anson.

Ambrose's testimony was to the effect that he and Harding decided to discharge Marsha Anson on Friday, June 20. Harding's testimony was to the same effect. However, as in the case of Tammie Anson, and for the same reasons, I find that Ambrose made the decision.

Turning to Ambrose's testimony in which he attempted to explain his decision to discharge Marsha Anson, I found his explanation suffering from a shifting and inconsistent content. Indeed, my overall impression of Ambrose's explanations of Marsha Anson's discharge was that of a verbal kaleidoscope. The variations in his responses to questions going to motive and his demeanor

suggested that he was improvising as he had when he filled out Marsha Anson's discharge notice and letter.

Ambrose testified initially that he terminated Marsha Anson for the reasons listed on the notice and accompanying letter. He stressed her telephone call on June 16 and her asserted failure to perform her housekeeping duties at station four as revealed by Respondent's inspection on June 20. He urged this alleged failing as an instance of the insubordination charged to Marsha Anson in the discharge letter. When pressed as to whether the inspection resulted in Marsha Anson's discharge, Ambrose testified: "The inspection coupled with the telephone call and some other incidents which are listed there is the reason she was let go." However, when counsel for the General Counsel asked for reasons other than insubordination, Ambrose answered: "The failure to carry out work duties." He went on to explain that this allegation arose from the inspection of June 20.

When counsel for the General Counsel again asked Ambrose to explain further the grounds for his decision, he replied:

Well, she was causing some problems in her department, you know, in the lounge and in the areas with her, you know, complaining which was causing some disruption in her department.

When pressed again for testimony regarding motive, Ambrose omitted the "problems in her department" and testified: "The insubordination and confidential information was [sic] two of the big ones."

Counsel for the General Counsel pressed Ambrose for an explanation of Marsha Anson's alleged violation of "Group III . . . (11) Abusive or inconsiderate treatment of patients, visitors or staff." Ambrose first suggested that this violation occurred when Marsha Anson called Carrol Harding a liar. However, when counsel for the General Counsel pressed Ambrose for more testimony about this element of Respondent's charges against Marsha Anson, Ambrose testified that he did not know what was said, only that "the word lie or liar was mentioned." When again counsel for the General Counsel asked about abusive treatment, Ambrose testified that it was "[t]he way [Anson] was talking to Carrol [Harding]" at a meeting prior to the inspection of June 20.

When Respondent's counsel asked, "Now, was there any single incident that led up to the firing," Roger Ambrose responded with a different mix or reasons and with little reliance upon the June 20 inspection as follows:

The floor was just the thing that put on the icing, the little time that she was over in my office, I could tell that she wasn't on the floors doing her job, the telephone call incident, and I told her to make them on break, just the whole stem [sic] of things.

In sum, the twists and turns in Ambrose's explanations suggested that they were afterthoughts raised after he had decided to discharge her because he suspected her of prounion sentiments. Accordingly, I find that Marsha

Anson's discharge on June 24 violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Chauffeurs, Teamsters, and Helpers Local Union No. 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent interfered with, coerced, and restrained its employees in the exercise of rights guaranteed by Section 7 of the Act, thereby committing unfair labor practices prohibited by Section 8(a)(1) of the Act, by: (a) maintaining surveillance over employees as they conversed; (b) warning employees about having contact with other employees who were known union activists; and (c) warning employees against engaging in solicitation on behalf of the Union, thereby applying its solicitation rules in a discriminatory manner.

4. Respondent violated Section 8(a)(3) and (1) of the Act by failing and refusing to recall Ralph E. Alvey on November 27, 1979, to full-time status because of his activity on behalf of the Union and by discharging employees Tammie S. Anson and Marsha L. Anson because of their suspected prounion sympathies or union activities.

5. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not committed any unfair labor practices except as noted above.

THE REMEDY

Having found that Respondent has engaged in, and is engaging in, unfair labor practices, I shall recommend that it cease and desist therefrom and take affirmative action necessary to effectuate the purposes of the Act. I shall further recommend that Respondent be ordered to offer employees Tammie Anson and Marsha L. Anson immediate and full reinstatement to their former positions or, if those positions are not available, to substantially equivalent positions, without prejudice to their entitlement to their seniority or other rights and privileges, and to make each of them and Ralph E. Alvey whole for any losses of pay each may have suffered by payment to each of them sums they would have earned but for the discrimination against them. Such losses shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corp.*, 251 NLRB 651 (1977).²¹

I shall also recommend that Respondent be required to expunge from its files any references to either the discharge of Tammie Anson on June 24, 1980, or the discharge of Marsha Anson on the same date, and notify each of them in writing that evidence of her unlawful discharge will not be used as a basis for future personnel actions against her.

²¹ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

The Board in *Lincoln Hills Nursing Home*, 257 NLRB 1145 fn. 2, imposed a broad remedial order after finding that this Respondent "demonstrated a general disregard for its employees' fundamental statutory rights." The unfair labor practices found herein are but further demonstrations of Respondent's "general disregard for its employees' fundamental statutory rights." *Lincoln Hills Nursing Home*, *supra*. Accordingly, I shall recommend imposition of a broad remedial order.

From the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended:

ORDER²²

The Respondent, Lincoln Hills Nursing Home, Inc.; Leaseholding Company; and Tell City Distributors (Joint Employers), Tell City, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, refusing to reinstate, or otherwise discriminating against employees because they support, have supported, or are suspected of supporting Chauffeurs, Teamsters, and Helpers Local Union No. 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, or any other labor organization.

(b) Warning employees not to maintain contacts with fellow employees who are known or suspected union supporters.

(c) Maintaining surveillance of employees as they converse in an effort to determine whether they are discussing membership or support for Chauffeurs, Teamsters, and Helpers Local Union No. 215, or any other labor organization.

(d) Enforcing its no-distribution/no-solicitation rule against employee solicitation on behalf of Chauffeurs, Teamsters, and Helpers Local Union No. 215, or any other labor organization, while permitting like activity with respect to other subjects or projects.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer Tammie S. Anson and Marsha L. Anson immediate and full reinstatement to their respective former positions of employment, dismissing if necessary anyone who may have been hired or assigned to perform their functions, or, if their former respective positions do not exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Make whole employees Ralph E. Alvey, Tammie S. Anson, and Marsha L. Anson for any loss of pay each may have suffered as a result of the discrimination each

²² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

has suffered in the manner set forth above in the section of this Decision entitled "The Remedy."

(c) Expunge from its files any references to the discharges of Tammie S. Anson and Marsha L. Anson on June 24, 1980, and notify each of them in writing that this has been done, and that evidence of her unlawful discharge will not be used as a basis for future personnel actions against her.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, wage rates and other records, work schedules, and all other records necessary or useful to determine the amount of backpay and other sums and benefits due under the terms of this Order.

(e) Post at its Tell City, Indiana, facility, copies of the attached notice marked "Appendix."²³ Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it 60 consecutive days thereafter, in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the unfair labor practices alleged in the amended complaint but not specifically found herein are hereby dismissed.

²³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all parties had the opportunity to present their evidence, it has been decided that we violated the law in certain respects. We have been ordered to post this notice. We intend to carry out the Order of the Board and abide by the following:

The National Labor Relations Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives whom they themselves select
- To engage in activities together for the purpose of collective bargaining or to Act together

in order to seek improvement in their wages, hours, working conditions, or other terms and conditions of employment

To refrain from any and all such activities.

WE WILL NOT discourage employees from joining, assisting, or favoring Chauffeurs, Teamsters, and Helpers Local Union No. 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging employees, by refusing reinstatement to employees who previously engaged in an economic strike or other union activity on behalf of the same or any other union, or by any other discriminations against employees in regard to their hire or tenure or conditions of employment.

WE WILL NOT warn employees against talking to or otherwise coming into contact with employees who are *known or suspected* union supporters.

WE WILL NOT engage in surveillance of our employees for the purpose of learning of their activities or sentiments regarding Chauffeurs, Teamsters, and Helpers Local Union No. 215, or any other labor organization.

WE WILL NOT discriminatorily apply our no-solicitation/no-distribution rule in order to discourage union activity among our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer Tammie S. Anson and Marsha L. Anson immediate reinstatement to their former positions, dismissing if necessary anyone who may have been hired or assigned to perform the work which they performed prior to their discharge, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of our discrimination, together with interest on those amounts.

WE WILL also make Ralph E. Alvey whole for any loss of pay he may have suffered as a result of our refusal to reinstate him on November 27, 1979, to full-time status, together with interest on that amount.

WE WILL expunge from our files any reference to the discharges of Tammie S. Anson and Marsha L. Anson on June 24, 1980, and notify them in writing that this has been done and that evidence of their unlawful discharges will not be used as a basis for future personnel actions against them.

LINCOLN HILLS NURSING HOME, INC.;
LEASEHOLDING COMPANY; AND TELL
CITY DISTRIBUTORS (JOINT EMPLOYERS)